

David K. Callahan, P.C. (IL 6206671), dcallahan@kirkland.com
KIRKLAND & ELLIS LLP
300 N. LaSalle Street
Chicago, Illinois 60654
Telephone: 312-862-2000
Facsimile: 312-862-2200

Attorney For Plaintiffs and Counter-defendants
BAXTER HEALTHCARE CORPORATION,
BAXTER INTERNATIONAL INC., and
BAXTER HEALTHCARE SA

Maureen K. Toohey (SBN 196401), mtoohey@toohey.com
TOOHEY LAW GROUP, LLC
One Financial Center, 15th Floor
Boston, Massachusetts 02111
Telephone: (617) 748-5511

Attorney for Plaintiff and Counter-defendant
DEKA PRODUCTS LIMITED PARTNERSHIP

Juanita R. Brooks (SBN 75934), jbrooks@fr.com
FISH & RICHARDSON P.C.
12390 El Camino Real
San Diego, California 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Attorney for Defendants and Counter-claimants
FRESENIUS MEDICAL CARE HOLDINGS,
INC. AND FRESENIUS USA, INC.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

BAXTER HEALTHCARE CORPORATION,
BAXTER INTERNATIONAL INC., BAXTER
HEALTHCARE SA, AND DEKA LIMITED
PARTNERSHIP,

Plaintiffs and Counter-defendants,

vs.

FRESENIUS MEDICAL CARE HOLDINGS,
INC., d/b/a FRESENIUS MEDICAL CARE
NORTH AMERICA, and FRESENIUS USA,
INC.,

Defendants and Counter-claimants.

Case No. C 07-01359 PJH (JL)

**STIPULATION OF REMOVAL OF
LIBERTY CYCLER FUNCTIONALITY
RELATING TO, AND DISMISSAL OF,
U.S. PATENTS NO. 6,929,751; AND
7,083,719**

1 WHEREAS, Plaintiffs have asserted in this action infringement of United States Patent
 2 No. 6,929,751 entitled “Vented Medical Fluid Tip Protector Methods” (“the ’751 patent”) and
 3 United States Patent No. 7,083,719 entitled “Medical System Including Vented Tip Protector”
 4 (“the ’719 patent”) in Counts VIII and IX of Plaintiffs’ First Amended Complaint, respectively;

5 WHEREAS, the Parties previously stayed by joint stipulation Counts VIII and IX of
 6 Plaintiffs’ First Amended Complaint and Defendants’ related Counterclaims and Affirmative
 7 Defenses (Dkt. No. 234);

8 WHEREAS, Defendants have removed functionality from the Liberty™ peritoneal
 9 dialysis cyclers relating to the basis for Plaintiffs’ assertion of Counts VIII and IX, as reflected in
 10 the deposition testimony of several Fresenius employees as well as several of Defendants’
 11 discovery responses; and

12 WHEREAS Defendants state in their Supplemental Response to Baxter Healthcare
 13 Corporation’s Amended First Set of Interrogatories (No. 3), dated April 1, 2009, that “Fresenius
 14 changed the accused Liberty’s priming mechanism to operate in a similar manner to previous
 15 Fresenius peritoneal dialysis cyclers.”

16 NOW, THEREFORE, the parties and their counsel of record stipulate as follows:

- 17 • Defendants agree that they will not make, use, sell, or offer for sale within the United
 18 States or import into or export from the United States any peritoneal dialysis machine
 19 using the “priming” functionality—or mere colorable variations of the functionality
 20 removed from the Liberty™ peritoneal dialysis cycler—as claimed in U.S. Patent No.
 21 6,929,751 until after the expiration of U.S. Patent No. 6,929,751, or until after a
 22 declaration that the previously asserted claims of the patent are invalid made by i) the
 23 United States Patent And Trademark Office or ii) a court of competent jurisdiction;
- 24 • Defendants agree that they will not make, use, sell, or offer for sale within the United
 25 States or import into or export from the United States any peritoneal dialysis machine
 26 using the “priming” functionality—or mere colorable variations of the functionality
 27 removed from the Liberty™ peritoneal dialysis cycler—as claimed in U.S. Patent No.

7,083,719 until after the expiration of U.S. Patent No. 7,083,719, or until after a declaration that the previously asserted claims of the patent are invalid made by i) the United States Patent And Trademark Office or ii) a court of competent jurisdiction;

- All claims, defenses and counterclaims relating to U.S. Patents No. 6,929,751; and 7,083,719 shall be dismissed, without prejudice from the instant litigation, with each party to bear its own costs and attorneys' fees as to such claims, defenses and counterclaims; and
- The parties agree that this stipulation is not an injunction but reserve all rights and remedies to enforce its terms.

IT IS SO ORDERED.

Dated: August 13, 2010

By: HONORABLE JUDGE PHYLLIS J. HAMILTON
United States District Court for the Northern District of California



August 12, 2010

By: /s/ David K. Callahan /s/

KIRKLAND & ELLIS LLP
David K. Callahan, P.C. (IL 6206671)
Garret Leach (*pro hac vice*)
Mary Zaug (*pro hac vice*)
300 N. LaSalle Street
Chicago, Illinois, 60654
Telephone: 312-862-2000
Facsimile: 312-862-2200

Robert G. Krupka (SBN 196625)
333 Hope Street
Los Angeles, California 90071
Telephone: 213-680-8400
Facsimile: 213-680-8500

Rachel Walsh (SBN 250568)
555 California Street
San Francisco, California, 94104
Telephone: 415-439-1400
Facsimile: 415-439-1500

Attorneys For Plaintiffs and Counter-
defendants

BAXTER HEALTHCARE CORPORATION,
BAXTER INTERNATIONAL INC., and
BAXTER HEALTHCARE SA

August 12, 2010

By: /s/ Maureen K. Toohey /s/

Maureen K. Toohey (SBN 196401)
TOOHEY LAW GROUP
One Financial Center, 15th Floor
Boston, Massachusetts 02111
Telephone: (617) 748-5511

COBLENTZ, PATCH, DUFFY & BASS LLP
Howard A. Slavitt (SBN 172840)
Zuzana Ikels (St. Bar No. 208671)
One Ferry Building, Suite 200
San Francisco, California 94111-4213
Telephone: (415) 391-4800
Facsimile: (415) 989-1663

Attorneys for Plaintiff and Counter-defendant
DEKA PRODUCTS LIMITED PARTNERSHIP

August 12, 2010

By: /s/ Michael E. Florey

FISH & RICHARDSON P.C.
Juanita R. Brooks (SBN 75934)
Todd G. Miller (SBN 163200)
Michael M. Rosen (SBN 230964)
12390 El Camino Real
San Diego, CA 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Mathias W. Samuel (*pro hac vice*)
Michael E. Florey (*pro hac vice*)
60 South Sixth Street, Suite 3200
Minneapolis, MN 55402
Telephone: (612) 335-5070
Facsimile: (612) 288-9696

Limin Zheng (SBN 226875)
500 Arguello Street, Suite 400
Redwood City, CA 94053
Telephone: (650) 839-5070
Facsimile: (650) 839-5071

Attorneys for Defendants and Counter-
claimants **FRESENIUS MEDICAL CARE**
HOLDINGS, INC. AND FRESENIUS
USA, INC.

ELECTRONIC FILING DECLARATION OF DAVID K. CALLAHAN, P.C.

I, David K. Callahan, declare as follows:

1. I am a partner at Kirkland & Ellis LLP, and I am Baxter Healthcare Corporation's, Baxter International Inc.'s, and Baxter Healthcare SA's legal counsel in the above-captioned litigation.
2. Pursuant to the Northern District of California Electronic Filing Procedures and General Order No. 45, I attest that Maureen K. Toohey, counsel for Plaintiff DEKA Products Limited Partnership and Michael E. Florey, counsel for Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc. concur in the filing of this document and have granted me permission to electronically file this document absent their actual signatures.

Dated: August 12, 2010

Respectfully submitted,

Kirkland & Ellis LLP

By: /s David K. Callahan s/
David K. Callahan, P.C. (IL 6206671),
dcallahan@kirkland.com

*Attorney for Plaintiffs and Counter-defendants
BAXTER HEALTHCARE CORPORATION,
BAXTER INTERNATIONAL INC., and
BAXTER HEALTHCARE SA*